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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th February 2009

No. 1243—li/1(B)-68/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th January 2009 in I. D. Case No. 194 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s The Oberoi, Nayapalli, Bhubaneswar and its workman Shri Dhruba Charan Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 194 OF 2008

Dated the 27th January 2009

Present :

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The General Manager, . . . First Party—Management
M/s The Oberoi, Nayapali,
Bhubaneswar.

And

Shri Dhruba Charan Sahoo, . . . Second Party—Workman
S/o Late Babaji Sahoo,
Plot No. 63, Satyanagar,
Bhubaneswar.

Appearances :

None	. . . For the First Party—Management
Shri Dhruba Charan Sahoo	. . . For the Second Party—Workman himself

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 9237—li/1(B)-68/1999-LE., dated the 12th July 1999, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008.

“Whether the action of the management of M/s The Oberoi, Bhubaneswar in dismissing the services of Shri Dhruba Charan Sahoo, Order Taker-*cum*-Cashier, w.e.f. 11th May 1998 is legal and/or justified ? If not, what relief Shri Dhruba Charan Sahoo is entitled to ? ”

2. The case of the second party (hereinafter referred to as the ‘workman’ may briefly be stated thus :—

That, the workman was initially appointed as a Trainee w.e.f. 29th November 1985 and in due course of his employment he was promoted to the post of Restaurant Order Taker/Cashier vide order, dated the 26th July 1993 and while working so he was placed under suspension followed by a charge-sheet, dated the 8th December 1997 on the ground of embezzlement of company’s money. His reply to the charge-sheet being found unsatisfactory, an enquiry was conducted and ultimately he was dismissed from service w.e.f. 11th May 1998. Challenging the enquiry conducted against him, the workman has pleaded in the claim statement that the same was conducted *ex parte* and no opportunity was afforded to him to prove his innocence, inasmuch as, the documents relying upon which the charges were framed were not supplied to him and so also the day-to-day proceedings of the enquiry. Further it is pleaded that the findings of the enquiry is vitiated due to procedural irregularities and the same is contrary to the principles of equity, fair play and natural justice and consequently the punishment imposed basing on such finding of the enquiry officer discloses the non-application of mind of the disciplinary authority, who disposed of the matter in a mechanical manner without taking into consideration the representation of the workman. With the aforesaid averments the workman has prayed to declare the action of the management to be illegal and unjustified and to grant him the relief of reinstatement in service with all back wages.

3. The first party (hereinafter referred to as the ‘Management’) entered appearance and filed its written statement. It is averred in the written statement that since the workman was found to have indulged in issue of an erroneous check to one in-house guest and thereby wilfully and deliberately caused misappropriation of the company’s cash and so also caused short billing against room service orders and brought disrepute to the Hotel, he was suspended and subsequently a charge-sheet was issued to him to which he submitted reply. It is pleaded that such reply of the workman being found unsatisfactory an enquiry was instituted against him in which he initially participated but for his remaining absent on subsequent dates of enquiry, the same was conducted *ex parte*. The management has pleaded that the enquiry officer conducted the enquiry giving due opportunity to the workman in accordance with the principles of natural justice and fair play and the

charges levelled against the workman having been well-proved in the enquiry, the enquiry officer submitted his report finding the workman guilty of the charges. The action of the disciplinary authority in imposing the punishment of dismissal on the workman is also pleaded to be justified in view of the proved allegations and the image and reputation of the Hotel. It is pleaded that the management having lost confidence on the workman, its action in the circumstance is just and proper and accordingly it has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

1. Whether the enquiry conducted against the workman was fair and proper ?
2. Whether the action of the management of M/s The Oberoi, Bhubaneswar in dismissing the services of Shri Dhruba Charan Sahoo, Order Taker-*cum*-Chashier, w.e.f. 11th May 1998 is legal and/or justified ?
3. If not, what relief Shri Dhruba Charan Sahoo is entitled to ?

5. A perusal of the order sheets maintained in the proceeding disclose that the Management after filing its written statement on the 4th December 2000 have all along taken steps till 7th June 2007 on which date the petition for time filed by the management was allowed subject to payment of cost of Rs. 500 and the case was posted to the 13th July 2007 for hearing of the dispute and for payment of cost to the workman. Thereafter the management remained absent and did not even comply the orders dated the 7th June 2007. However, taking a lenient view the management was afforded another chance and the case was posted to the 24th July 2007 for the purpose, but the management intentionally avoided to appear on the said date for which order was passed setting it *ex parte* on the 24th July 2007. Thereafter, the workman was directed to lead evidence on *ex parte* and pursuant to such order, the workman filed his evidence on affidavit and brought on record documents which have been marked as Exts. 1 to 24.

Issue No. 1

6. Relating to the aforesaid issue even if the management was directed to lead evidence first vide order, dated the 12th February 2007, neither the management carried out the aforesaid order nor produced any documentary evidence in support of its contention that the domestic enquiry conducted against the workman for the alleged misconduct was fair and proper and so also it was held in consonance with the principles of natural justice and fair play. In absence of any positive evidence on this issue, it cannot be held that the so-called enquiry was conducted against the workman adhering to the principles of natural justice.

The workman, on the other hand, in his unchallenged evidence has stated that although he participated in the enquiry throughout but for his absence on the 16th February 1998 which was neither deliberate nor intentional but on reasonable ground he was set *ex parte* and thus he could not get a chance to disprove the evidence produced against him in the enquiry, Further, the workman

has stated in his evidence that without considering his representations, dated the 12th January 1998, the 15th January 1998, 20th January 1998, the 5th February 1998 and the 9th February 1998 which have been marked as Exts. 15, 16, 17, 18 and 19, respectively in the enquiry proceeding, the enquiry officer proceeded with the enquiry for which he was seriously prejudiced. The stand of the workman on the issue is found to have been fully corroborated in his evidence on affidavit.

7. It is well-settled that a disciplinary enquiry has to be a *quasi judicial* enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially since it affects the livelihood of a person and is likely to cast stigma. In the case in hand, the workman has filed and proved Exts. 1 to 5, which are his appointment orders, letters of confirmation and promotion orders and a perusal of the same reveals that his performance was satisfactory althrough. The misconducts presently alleged against the workman vide charge sheet, Ext. 7 having not been duly enquired into giving due weightage to the principles of natural justice, the same cannot be held to be fair and proper. Hence, this issue is answered against the management.

Issue No. 2

8. In view of the finding arrived at on Issue No. 1, the consequent finding of the disciplinary authority in imposing the punishment of dismissal from services on the workman w.e.f. the 11th May 1998 is neither legal nor justified.

Issue No. 3

9. Now coming to the question of relief to which the workman is entitled, it is held that the workman is entitled to reinstatement in service forthwith. He is, however, not entitled to any back wages in absence of any evidence that during the period of his dismissal he was not gainfully employed elsewhere. For non-implementation of the order, dated the 7th June 2007, the management is directed to pay a compensation of Rs. 5,000 (Rupees five thousand) only to the workman. The order, as aforesaid be carried out within a period of one month from the date of publication of the Award in the official Gazette.

Dictated and corrected by me.

P. C. MISHRA
27-1-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

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27-1-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government